

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 127 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

CHHAYABEN MADHUKAR HARNE
VERSUS
MANORAMABEN PARSHOTTAM LAHUTE

Appearance:

MR JM MALKAN for the Petitioner
MR BH BRAHMBHATT for Respondent No.1
None present for Respondent No.2.

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 04/04/2000

C.A.V. JUDGMENT

Heard the learned counsel for the parties.

2. This revision application clearly gives out how it is difficult for a decree holder to get decree which is lawfully obtained and in this case on consent, executed. The judgment debtor with the connivance and help of none other than his own daughter has made all efforts and still making efforts to frustrate the result of decree which has been passed way back in the year 1983. The objections filed in the execution proceedings of the decree by the petitioner is not only an abuse of the process of the court but prima-facie appears to be a case of perjury. At one point of time, I thought of to order filing of complaint against this lady but as this course has not been adopted by the executing court and the fact that she is a lady and helping her father, that action is not taken.

3. In 1966 the mother-in-law of the respondent No.1 and the mother of the respondent No.2 and grandmother of the petitioner filed a suit No. 527 of 1966 for eviction of the respondent NO.2 from the suit premises. Thereafter late Durgabai filed suit for partition of the property being civil suit NO. 654 of 1974. A preliminary decree has been passed in the suit on 24-2-1981 and the property in dispute was ordered to be divided in four equal parts i.e. one for mother and three for sons. The pedigree of the family is as under:

Mother Durgabai

Sons Jashwant Rao, Parshram and Amrutrao.

Parshram's

wife Manorma, respondent NO.1

AmrutRao's

Daughter Chhaya, present petitioner.

4. Against this preliminary decree in the partition suit, the respondent NO.5 filed an appeal No. 167 of 1981. In the appeal, the matter has been settled and decree on consent was drawn on 11-1-1983. The terms of the decree are as under:

- (a) By family settlement, Parshram gave in sale his undivided 1/4th share to Amrutrao in Rs.8000/- and Amrutrao became the owner of half building.
- (b) Mother Durgabai and Jaswantrao got 1/2 share in the building.

(c) Building divided in two parts - North and South and Amrutrao was given 1/2 part of southern side.

(d) Durgabai and Jashwantrao were given northern side.

(e) Court ordered Amrutrao to hand over possession of northern side of first floor to Durgabai and Jashwantrao and they should hand over southern side of ground floor to Amrutrao within two months.

(f) Amrutrao had to undertake partition of ground and first floor by Khapeda at his cost within two months and hand over the possession of the southern side.

5. As per the consent decree, 1/4th share of Parshram was purchased by the respondent NO.2. Durgabai and Jaswantrao have sold their portion in the property i.e. northern portion by a registered sale deed dated 14th July, 1983 to Manorama, wife of Parshram. The keys of this portion and vacant and peaceful possession were handed over to Manorama by Durgabai and Jaswantrao. In October, 1983, Amrutrao, the respondent NO.2 took away key from Manorama (Bhabhi) under false pretext to make khapeda partition. It is to be mentioned here that as per the consent decree which is passed on 11th January, 1983, the khapeda partition of the property was to be made by the respondent NO.2 at his own cost. He illegally retained the possession. The khapeda partition was made on 7th July, 1997 under the court's order and through the help of the Court Commissioner and police protection by Manorma at her costs spending about Rs.5000/- to Rs.6000/-. For execution of the decree, a Darkhast No. 234 of 1984 was filed on 22-8-1984 by the respondent NO.1 against the respondent NO.2. The respondent NO.2 filed objections Ex.30. These objections came to be rejected by the executing court on 29th March, 1985. Against this order of the executing court, the respondent No.2 has not filed any revision application before this court. The second objections were filed by the respondent No.2 Ex. 118 on 18th August, 1997. The executing court has rejected these objections on 26th September, 1997. Against this order of the executing court, the respondent NO.2 filed civil revision application No. 1429 of 1997 in this court which came to be rejected on 11-12-1997 with costs of Rs.1500/-. It is necessary to mention here that in both

these objections Ex. 10 and 118, the respondent No.2 has not stated that his daughter Chhaya, the present petitioner is the tenant in the disputed portion of the property. The petitioner filed Ex. 29 on 1-4-1992 in the executing court i.e. after about eight years of filing of the execution application by the petitioner respondent No.1 and prayed therein for her joining as a party to these proceedings. This application came to be rejected by the executing court under its order dated 3-3-1993. This order of the executing court was not challenged by the petitioner and it attained the finality. The petitioner filed standard rent application NO. 35 of 1992 on 6th April, 1992 against the respondents No. 1 and 2, which came to be dismissed for default on 11th October, 1996. Against this order, she has also not taken any proceedings and it attained the finality. The petitioner in her standard rent application stated that she did not know who is the landlord and to whom the rent has to be paid by her be decided by the court. If she would have been a tenant since 1-3-1983 then what for this respondent NO.1 has been made opponent in the standard rent application No. 35 of 1992. The second application Ex. 69 for raising the objection against the execution of decree filed by the petitioner on 11-3-1994 came to be rejected on 3-1-1995. Against this order also, no revision application has been filed. The second application has been filed after about two years of her first objections Ex. 29. Third objection application has been filed Ex. 138 on 1-1-1998. It is to be noticed here that these objections were filed by the petitioner after 20 days of the order of this court in the revision application No. 1429 of 1997 filed by the respondent No.2. These objections were rejected under the impugned order.

6. In all these applications/objections, she claimed to have got the premises from her father Amrutrao. First time on affidavit in this revision application, she is claiming to have been entered into the premises as a tenant by Durgabai and Jaswantrao on 1-3-1983. This what now she is taking somersault in the revision application is nothing but only a false stand and it is really shocking that to what extent a litigant can go in the court. It is done for one of the reasons that the courts are not taking these matters very seriously. In case this perjury, false statements or filing of false affidavits are taken seriously and appropriately the persons are being prosecuted and punished then there may not be repetition of the same but as stated earlier, taking of the lenient view by the courts, these types of false affidavits etc. are being

repeatedly filed in the court proceedings.

7. From the facts of this case, it is clearly borne out that this case of the petitioner of her tenancy in the suit premises either through her father or through Durgabai and Jaswantrao is absolutely a false case. She is a married daughter of Amrutrao and she is residing with his family at the address Parth Bhumi, Block No. 73, House NO. 924, G.H.B., G.I.D.C., Vadodara. It is only an effort and attempt on the part of the respondent NO.2 with the help and connivance of his own daughter to create all obstructions and obstacles in the execution of the decree which has been passed in the year 1983. Learned executing court has not committed any illegality in exercise of its jurisdiction in passing of the impugned order. Learned executing court has correctly looked into and decided the matter. However, it is a case where the learned executing court has liberally proceeded. Otherwise it could have given the direction for filing of a criminal complaint against this lady for perjury. Be that as it may. For the reasons, as stated earlier and in the facts of this case, now this court is not adopting this course but it is a case where exemplary costs has to be awarded against this petitioner and in favour of the respondent NO.1.

8. In the result, this revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. The petitioner is directed to pay Rs.5000/= as costs of this revision application to the respondent NO.1.

zgs/-